

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
324(a)	32:114 (less 1st sentence).	June 3, 1916, ch. 134, § 77; restated June 15, 1933, ch. 87, § 14; restated June 19, 1935, ch. 277, § 4, 49 Stat. 391; July 9, 1952, ch. 608, § 803 (11th par.), 66 Stat. 505.
324(b)	32:114 (1st sentence).	

In subsection (a), the words “shall be discharged” are substituted for the words “shall thereupon cease to be a member thereof” since an official is required to give the officer a discharge certificate. The words “becomes 64 years of age” are substituted for the words “upon reaching the age of sixty-four years”. The words “his Federal recognition is withdrawn” are substituted for the words “When Federal recognition is withdrawn * * * as provided in section 115 of this title”.

In subsection (b), the words “Subject to subsection (a)” are inserted for clarity. The words “as provided by the laws” are substituted for the words “in such manner as * * * shall provide by law”.

AMENDMENTS

2011—Subsec. (b). Pub. L. 111-383 amended directory language of Pub. L. 109-163, § 1057(b)(5). See 2006 Amendment note below.

2008—Subsec. (c). Pub. L. 110-417 added subsec. (c).

2006—Subsec. (b). Pub. L. 109-163, § 1057(b)(5), as amended by Pub. L. 111-383, substituted “State of whose National Guard he is a member, or by the laws of the Commonwealth of Puerto Rico, or the District of Columbia, Guam, or the Virgin Islands, of whose National Guard he is a member” for “State or Territory of whose National Guard he is a member, or by the laws of Puerto Rico or the District of Columbia, if he is a member of its National Guard”.

1988—Subsec. (b). Pub. L. 100-456 struck out “, the Canal Zone,” after “Puerto Rico”.

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 111-383, div. A, title X, § 1075(h), Jan. 7, 2011, 124 Stat. 4377, provided that the amendment made by section 1075(h)(4)(C) is effective as of Jan. 6, 2006, and as if included in Pub. L. 109-163 as enacted.

§ 325. Relief from National Guard duty when ordered to active duty

(a) RELIEF REQUIRED.—(1) Except as provided in paragraph (2), each member of the Army National Guard of the United States or the Air National Guard of the United States who is ordered to active duty is relieved from duty in the National Guard of his State, or of the Commonwealth of Puerto Rico, Guam, or the Virgin Islands or the District of Columbia, as the case may be, from the effective date of his order to active duty until he is relieved from that duty.

(2) An officer of the Army National Guard of the United States or the Air National Guard of the United States is not relieved from duty in the National Guard of his State, or of the Commonwealth of Puerto Rico, Guam, or the Virgin Islands or the District of Columbia, under paragraph (1) while serving on active duty if—

(A) the President authorizes such service in both duty statuses; and

(B) the Governor of his State, or of the Commonwealth of Puerto Rico, Guam, or the Virgin Islands, or the commanding general of the District of Columbia National Guard, as the case may be, consents to such service in both duty statuses.

(b) ADVANCE AUTHORIZATION AND CONSENT.—The President and the Governor of a State or

Territory, or of the Commonwealth of Puerto Rico, or the commanding general of the District of Columbia National Guard, as applicable, may give the authorization or consent required by subsection (a)(2) with respect to an officer in advance for the purpose of establishing the succession of command of a unit.

(c) RETURN TO STATE STATUS.—So far as practicable, members, organizations, and units of the Army National Guard of the United States or the Air National Guard of the United States ordered to active duty shall be returned to their National Guard status upon relief from that duty.

(Aug. 10, 1956, ch. 1041, 70A Stat. 607; Pub. L. 100-456, div. A, title XII, § 1234(b)(6), Sept. 29, 1988, 102 Stat. 2059; Pub. L. 108-136, div. A, title V, § 516, Nov. 24, 2003, 117 Stat. 1461; Pub. L. 109-163, div. A, title X, § 1057(b)(6), Jan. 6, 2006, 119 Stat. 3442; Pub. L. 110-417, [div. A], title V, § 517, Oct. 14, 2008, 122 Stat. 4442.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
325(a)	50:1120.	July 9, 1952, ch. 608, §§ 710, 712(b) (less last 17 words), 66 Stat. 503, 504.
325(b)	50:1122(b) (less last 17 words).	

In subsection (a), the words “in the service of the United States” are omitted as surplusage. The words “effective date of his order to active duty until he is relieved from that duty” are substituted for the words “active-duty date of the orders and for as long as they remain on active duty in the service of the United States”. 50:1120 (last sentence) is omitted as surplusage, since the persons involved are members of the Army or the Air Force.

In subsection (b), the words “upon relief from that duty” are substituted for the words “upon being relieved from active duty”. The words “their National Guard status” are substituted for the words “to the National Guard and Air National Guard in their respective States, Territories, and the District of Columbia”.

AMENDMENTS

2008—Subsec. (a)(2). Pub. L. 110-417, § 517(a), struck out “in command of a National Guard unit” after “active duty” in introductory provisions.

Subsecs. (b), (c). Pub. L. 110-417, § 517(b), added subsec. (b) and redesignated former subsec. (b) as (c).

2006—Subsec. (a). Pub. L. 109-163 substituted “State, or of the Commonwealth of Puerto Rico, Guam, or the Virgin Islands” for “State or Territory, or of Puerto Rico” in par. (1) and introductory provisions of par. (2) and “State or Territory or Puerto Rico” in par. (2)(B).

2003—Subsec. (a). Pub. L. 108-136, § 516(a), substituted “(a) RELIEF REQUIRED.—(1) Except as provided in paragraph (2), each” for “(a) Each” and added par. (2).

Subsec. (b). Pub. L. 108-136, § 516(b), inserted heading.

1988—Subsec. (a). Pub. L. 100-456 struck out “, the Canal Zone,” after “Puerto Rico”.

NATIONAL GUARD SUPPORT FOR 2004 DEMOCRATIC AND REPUBLICAN NATIONAL CONVENTIONS AND OTHER APPROPRIATE EVENTS

Memorandum of President of the United States, July 23, 2004, 69 F.R. 46397, provided:

Memorandum for the Secretary of Defense

By the authority vested in me as President by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, I hereby delegate to you the functions and authority of the President contained in section 325 of title 32, United States Code, with respect to activities related to the

2004 Democratic and Republican National Conventions, and other appropriate events as you determine from time to time in consultation with the Assistant to the President for Homeland Security.

You are further authorized and directed to make necessary arrangements to fund this activity from the proper appropriations and to publish this memorandum in the Federal Register.

GEORGE W. BUSH.

§ 326. Courts-martial of National Guard not in Federal service: composition, jurisdiction, and procedures

In the National Guard not in Federal service, there are general, special, and summary courts-martial constituted like similar courts of the Army and the Air Force. They have the jurisdiction and powers, except as to punishments, and shall follow the forms and procedures, provided for those courts. Punishments shall be as provided by the laws of the respective States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, and the Virgin Islands.

(Aug. 10, 1956, ch. 1041, 70A Stat. 608; Pub. L. 107-314, div. A, title V, § 512(a), Dec. 2, 2002, 116 Stat. 2537; Pub. L. 109-163, div. A, title X, § 1057(b)(7), Jan. 6, 2006, 119 Stat. 3442.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
326	32:91.	June 3, 1916, ch. 134, § 102, 39 Stat. 208.

The words “not in Federal service” are substituted for the words “Except in organizations in the service of the United States”. The words “have the jurisdiction and powers” are substituted for the words “and have cognizance of the same subjects, and possess like powers”. The words “of three kinds, namely”, “provided for by the laws and regulations governing”, “proceedings of courts-martial of the National Guard”, and “modes of” are omitted as surplusage.

AMENDMENTS

2006—Pub. L. 109-163 substituted “States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, and the Virgin Islands” for “States and Territories, Puerto Rico, and the District of Columbia”.

2002—Pub. L. 107-314 inserted at end “Punishments shall be as provided by the laws of the respective States and Territories, Puerto Rico, and the District of Columbia.”

§ 327. Courts-martial of National Guard not in Federal service: convening authority

(a) In the National Guard not in Federal service, general, special, and summary courts-martial may be convened as provided by the laws of the respective States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, and the Virgin Islands.

(b) In the National Guard not in Federal service—

(1) general courts-martial may be convened by the President;

(2) special courts-martial may be convened—

(A) by the commanding officer of a garrison, fort, post, camp, air base, auxiliary air base, or other place where members of the National Guard are on duty; or

(B) by the commanding officer of a division, brigade, regiment, wing, group, de-

tached battalion, separate squadron, or other detached command; and

(3) summary courts-martial may be convened—

(A) by the commanding officer of a garrison, fort, post, camp, air base, auxiliary air base, or other place where members of the National Guard are on duty; or

(B) by the commanding officer of a division, brigade, regiment, wing, group, detached battalion, detached squadron, detached company, or other detachment.

(c) The convening authorities provided under subsection (b) are in addition to the convening authorities provided under subsection (a).

(Aug. 10, 1956, ch. 1041, 70A Stat. 608; Pub. L. 100-456, div. A, title XII, § 1234(b)(4), Sept. 29, 1988, 102 Stat. 2059; Pub. L. 107-314, div. A, title V, § 512(b), Dec. 2, 2002, 116 Stat. 2537; Pub. L. 109-163, div. A, title X, § 1057(b)(7), Jan. 6, 2006, 119 Stat. 3442.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
327(a)	32:92 (1st 46 words).	June 3, 1916, ch. 134, § 103, 39 Stat. 208.
327(b)	32:92 (less 1st 46 words).	

In subsection (a), the words “Federal service” are substituted for the words “service of the United States”.

In subsection (b), the words “A general court-martial may sentence to—” are substituted for the words “and such courts shall have the power to impose * * * to sentence”. The words “any combination of these punishments” are substituted for the words “or any two or more of such punishments may be combined in the sentences imposed by such courts”.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109-163 substituted “States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, and the Virgin Islands” for “States and Territories, Puerto Rico, and the District of Columbia”.

2002—Pub. L. 107-314 amended section catchline and text generally. Prior to amendment, text read as follows:

“(a) In the National Guard not in Federal service, general courts-martial may be convened by the President or by the governor of a State or Territory or Puerto Rico or by the commanding general of the National Guard of the District of Columbia.

“(b) A general court-martial may sentence to—

“(1) a fine of not more than \$200;

“(2) forfeiture of pay and allowances;

“(3) a reprimand;

“(4) dismissal or dishonorable discharge;

“(5) reduction of a noncommissioned officer to the ranks; or

“(6) any combination of these punishments.”

1988—Subsec. (a). Pub. L. 100-456 substituted “Territory or Puerto Rico” for “Territory, Puerto Rico, or the Canal Zone.”

MODELS FOR STATE CODE OF MILITARY JUSTICE AND STATE MANUAL FOR COURTS-MARTIAL

Pub. L. 107-314, div. A, title V, § 512(e), Dec. 2, 2002, 116 Stat. 2537, provided that:

“(1) The Secretary of Defense shall prepare a model State code of military justice and a model State manual for courts-martial to recommend to the States for use with respect to the National Guard not in Federal service. Both such models shall be consistent with the recommendations contained in the report that was is-